(2005) 12 AHC CK 0142

Allahabad High Court

Case No: Testamentary Case No. 28 of 1997

In Re: Begum Shanti Tufail Ahmad Khan an application for grant of probate of the property and credit of executor In Re: Jalauddin		APPELLANT
	Vs	
		RESPONDENT

Date of Decision: Dec. 6, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 48
- Limitation (Amendment) Act, 1901 - Article 181
- Limitation Act, 1963 - Article 137, 4, 5
- Succession Act, 1925 - Section 141

Citation: AIR 2006 All 75

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Advocate: Surendra Kumar Mishra, for the Appellant;

Final Decision: Dismissed

Judgement

Sunil Ambwani, J.

The plaintiff-Sri Jalaluddin son of Badruddin filed this testamentary case on 18.9.1997 for grant of probate with a copy of Will annexed thereto executed by the deceased -Begum Shanti Tufail Ahamad Khan wife of late Tufail Ahmad Khan, resident of 18-B Maharani Bagh, New Delhi, who died on 9.10.1976 leaving behind her alleged Will and Testament dated 23.5.1974 (wrongly mentioned in para 6, 7 and 10 as 23.5.1994). In para 11 of the plaint, it is alleged that she had handed over the Will to one Sri Yusuf Ali Khan son of Sri Kamaluddin Khan resident of 60 Jufarabad, Delhi who is also an attesting witness to the Will with instructions to hand it over to

the applicant. The said Sri Yusuf Ali Khan in pursuant to instruction handed over the Will to the applicant on 15.7.1997 (after 23 years).

2. In the Will (Paper No. A-3/16) the deceased claimed to be 60 years old and owner of properties in many cities of India, which she got from her husband, more particularly in Delhi, U.P., Madhya Pradesh and Haryana including Plot No. 43 and 44 on Retuned Road on which House No. 18-B Maharani Bagh New Delhi is built; Shanti Kunj and Dileram Estate in Mussorrie in U.P., Tasvir Mahal Cinema in Aligarh, Digar properties at Hazratganj, Lucknow and Civil Lines at Allahabad and also at Gwalior in Madhya Pradesh, Garhi Bahrail and Nawab Garhi in District Karnal, Haryana. She bequeathed the entire properties to a son in the family, Jalalludin son of Bahruddin resident of Muzaffarnagar, U.P. related to her as the family grandson (Khandani Chirag). In this Will she scribed that her husband was a lecturer in Aligarh University and had desired that the property should remain in the family. left by her husband on his death to Jalaluddin, who he expected to follow the traditions of the family. She gave him her full rights to get his name transferred in all the properties. The Will was scribed by Sri Sadhu Ram, Kashmiri Gate, Delhi on 23.5.1974 and was witnessed by Sri Yusuf Ali Khan son of Kamalludin Khan resident of 60 Jafarabad, Delhi and Sri Kitabuddin. Son of Sri Mohd. Nasir Husain, resident of Kairana, Muzaffarnagar.

3. Notices were issued on 19.9.1997 to Sri Ruikom Deen son of Sri Badruddin, alleged to be the only surviving next kith and kin. Administrator General, Board of Revenue, U.P. and to be published in the news paper. The advertisement was carried out in ''Amar Ujala'' dated 12.11.1997 published from Meerut and ''Hindustan Times'' published from New Delhi on 13.11.1997. Sri Rukom Deen son of Sri Badruddin appearing through Sri R.K. Upadhaya, Advocate filed his affidavit dated 28.11.1997 stating in para 3 that so far as the Will as executed by Shanti Tuffail Ahmad on 23.7.74 is oncerned the deponent has nothing to do with the Will as well he he has no objections. Affidavit of valuation of assets was filed describing the properties in the state of Delhi. Uttar Pradesh, Madhya Pradesh and Haryana with a total value of Rs. 9 lacs only. In pursuance of directions by this Court the better particulars with full valuation were given by a fresh affidavit of valuation valuing the properties at Rs. 20, 90, 400.00 only.

4. Objections were filed by Sri Ravi Sikari claiming to be owners of B-18 Maharani Bagh, New Delhi. In these objections dated 15.7.1998 he denied the title of deceased and claimed that he had acquired the Perpetual Sub Lease dated 31.5.1965 from Maharani Bagh Cooperative Housing Building Society Ltd. which is a registered document and has been paying house tax vide assessment order annexed to his objections. Objections were also filed by Sri Patwant Singh and Smt. Rasil Basu on 17.5.1989 stating that a Muslim could not have given more than one third of her properties by Will under the Muslim Law. The properties bearing No. 11 Amrita Shergil Marg New Delhi was allotted to Sri Tufail Ahamad Khan vide Lease Deed

dated 23.12.1939. He sold the properties to Sri Kamla Devi on 13.2.1948, who thereafter sold to Smt. Harnam Kaur on 20.9.1949. Smt. Harnam Kaur executed Perpetual Lease Deed dated 13.4.1964 in favour of the objector on which name of the objectors were mutated on 10.7.1967 and since then the objectors are in possession.

5. The testamentary case was converted into suit and was heard on many dates. Preliminary issues were framed on 20.1.2004 and parties led evidence with regard to ownership of the properties detailed as above. Objections/caveats were also filed by Smt. Pushpa Guglani. The Court framed preliminary issue whether the caveators Mr. Ravi Sikari and Smt. Pushpa Guglani have any interest to maintain the caveat. These legal issues were considered and decided by this Court on 24.2.2004. It was held following Ishwardeo Narain Singh Vs. Sm. Kamta Devi and Others, , that grant of Probate or Letters of Administration, does not prove the legality of the bequest. Such grant proves only two things, that the signature on the Will were made by the testator and the will is valid will fulfilling the requirements of signature of testator and attestation; and that the testator at the time of signing of the will was of sound mind and the will was not the effect of fraud, coercion and undue influence. Even if Probate/Letters of Administration is granted by the Court, it would not affect the interest of the caveators, in case they have got title in the properties and they will be at liberty to prove their title in any proceedings which may be directly concerned therewith, notwithstanding the grant of Probate or Letters of Administration and even if the application is refused, still the natural heirs of the testator would be entitled to assert their rights to the property in dispute. Smt. Pushpa Guglani, claimed to be a transferee vide Agreement dated 23.10.1954 from the lessee vide Lease Deed dated 4.2.1955 from Sri K.B. Moh Mazar, who was the grantee of the lease from Government General in Council dated 22.4.1941 as nazul land. It was held that both the caveators namely Mr. Sikri and Smt. Guglani did not have have any caveatable interest and thus their caveats were discharged.

6. Sri Nalin Kumar Sharma has filed objections on behalf of S/Shri Asif Khan, Mohd. Afaq, Mohd. Aftab Abid, Latif and Ahmad Latif, giving the pedigree Shri Gulam Mohd. Khan, who had three sons namely Shri Mohd. Hussain Khan, Shri Anwar Ali Khan and Shri Abdulla Khan whereas Shri Tufail Ahmad Khan (died on 25.9.1951) was grandson of Mohd. Hussain Khan. Anwar Yasim Khan (died on 16.6.1968) was son of Ahmad Ali Khan and the objectors Mohd. Yusif claimed to be grandson of late Abdul Khan and third son of common ancestor Nawab Gulam Mohd. Khan. In these objections it is stated that on the death of Tufail Ahmad Khan at the age of 42 years his properties were attached by the Collector, Aligarh under the Courts of Wards Act. The Collector, Aligarh filed an interpleader suit in Civil Court Aligarh. The Civil Judge. Aligarh in Suit No. 88 of 1991 decided that as per Muslim law Begum Shanti Tufail Khan inherited one fourth share in the property of Nawab Tufail Ahmad Khan and that remaining three fourth share of the properties were inherited by Nawab Yusuf Ali Khan, who thereafter left the entire share in favour of Khursheed Yusuf

Ahmad Khan the son of Fatima Begum and cousin Ahmad Hasan Khan. The Nawab Yusuf Ali Khan died on 16.6.1968 without leaving any issue. The father of the objectors Sri Abdul Ali Khan filed was residing at Bombay since 1952 to 1984 and returned to Bhopal in 1993. The father never involved his sons-the objectors in family litigation. They had no knoweldge of the litigatin. He had given power of attorney to one Shri Abib Ahmad for doing pairavi of his cases. Jalaluddin-the plaintiff in these proceedings was a worker (Karinda) of Abib Ahmad of Muzzaffarnagar. He used to write letters to their father. One such letter relating to the properties at Panipat dated 29.9.1993 is annexed to the affidavit of Shri Moh Aftab. The father of the objectors filed a suit at Panipat as heirs of Nawab Yusuf Ali Khan against one Mohd. Umar, who tried to usurp the properties by Nawab Yusuf Khan at Panipat by a forged Will. The suit was decreed in favour of Sri Abdul Latif Khan. The appeal against which was dismissed by District Judge. Karnal and the High Court of Punjab and Haryana also dismissed the R.S.A. of Ahmad Umar and accordingly the agricultural properties in village Sewat Ghari were mutated in favour of Abdul Latif.

7. In respect of mutation of agricultural properties in village Ghari Baroul and village Bapoli in district Panipat Begum Rafia Khursheed widow of Khursheed Ahmad Khan claimed herself as heir of Begum Shanti Tufail. The objectors also claim to be heirs of late Begum Shanti Tufail as the only male surviving heirs in the family of Nawab Ghulam Mohd. Khan the common ancestor. The Assistant Collector, First Grade, Panipat decided the dispute in favour of the objectors on 28.1.2003. No appeal was filed against the order. The objectors have challenged the genuineness of the Will and have also alleged that Begum Shanti Tufail Ahmad did not inherit more than one fourth share and could not give any Will more than one third of her share without the consent of other surviving heirs.

8. Objections have also been filed on 14.9.2005 by one Munna son of late Abdul Rajjak resident of 429/ Muatismganj, Allahabad through Sri D.P. Misra, Advocate bringing on record the Will dated 11.12.1978 (in Urdu) of Jubeda Begum heir of her late husband Nawab Yusuf stating that she is the owner of Yusuf Manzil bearing property No. 2 Nawab Yusuf Road Allahabad and bequeathed it in favour of applicant Munna. It is alleged in the objections that Begum Shanti Tufail Ahmad Khan was not the co-sharer in the property of late Jabeda Begum wife of late Nawab Mohd. Yusuf and was not empowered to transfer the properties by her Will in question dated 23.5.1974 and thus the testamentary suit is liable to be rejected.

9. I have heard Sri S.K. Misra and Sri Bhagwati Prasad Srivastava for plaintiff Jalaluddin; Sri N.K. Sharma and Sri D.P. Misra for objectors and Sri J. Nagar, the Administrator General, U.P.

10. Sri J. Nagar has raised a preliminary objection namely that the Will without prejudice to the plea that it is not genuine, is void as it transfers more than one third of the properties without the consent of the other heirs and further that the

application seeking in the present case is barred by limitation as no good and valid reason has been shown in filing the application seeking Probate after more than 20 years of the death of testator.

11. The preliminary objections raised by the objectors and the Administrator General are legal in nature and thus it would be appropriate to decide them before the Court may proceed to take evidence with regard to genuineness of the will.

12. It was held in Izul Jabbber Khan v. Chairman, District Katchery (1956) Nag. 501 that every Muhammadan who is of sound mind and is not a minor may dispose of his properties by Will which may be verbal or in writing. The bequest to an heir is however not valid unless the other heirs consent to the bequest after the death of the testator. The silence of other heirs, however, shall not amount to implied consent.... In Mullah''s Mohamdan Laws (Section 118), it is propounded that a Mahomedan cannot dispose of by will more than a third of the surplus of his estate after payment of funeral expenses and debts. The bequest in excess of the legal third cannot take effect, unless other heirs consent thereto, after the death of the testator. Mullah has relied upon Hedaya. 671 (page 141) which pronounced that wills are declared to be lawful in the Koran and the traditions and all our doctors, moreover, have concurred in this opinion." The limit of one third, however, is not laid down in the Koran. This limit derives sanction from a tradition reported by a Abee Vekass. It is said that the prophet paid a visit to Abhee Vekass while the latter was ill and his life was despaired of. Abhee Vekass had no heirs except a daughter and he asked the Prophet whether he could dispose of the whole of his properties by will, to which the Prophet replied saying that he could not dispose of the whole, nor even two-thirds, nor one- half but only one-third. Though the limit of one third is not prescribed by the Koran, there are indications in the Koran that a Mahomedan may not so dispose of his property by will as to leave his heirs destitute. If the heirs do not consent, the remaining two- third must go to the heirs in the shares prescribed by the law. The consent need not be express. It may be signified by conduct showing a fixed and unequivocal intention.

13. In Anarali Tarafdar Vs. Omar Ali and Others, , it was held by Calcutta High Court that under the Mahomedan Law a Mahomedan can not by will dispose of more than one-third of his estate unless such bequest in excess of the legal third is consented by the heirs after the death of the testator. In Yasin Imambhai Shaikh (deceased by L.R.''s) Vs. Hajarabi and Others, and Damodar Kashinath Rasane Vs. Shahajsdibi and Others, , the Bombay High Court held that a Muslim cannot bequeath more than one-third of his properties whether in favour of a stranger or his heirs when there are heirs or other heirs left by him as the case may be. If there are no heirs or other heirs, he can dispose of his entire property in favour of a stranger or a sole heir. If the property bequest is in excess of one third of the assets the excessive bequest is not valid and unless the heirs or other heirs give their consent. Under the Hanafi Law the consent has to be given after death of the testator whereas under the other

schools of law it could be given either before or after the death of the testator.

14. In Abdul Manan Khan v. Mirtuza Khan AIR 1991 Pat 151, Hon''ble S.B. Sinha, J (as he then was) held relying upon Section 118 of Mullah''s principles of Mahomedan Law that a Mahomedan cannot by a will dispose of more than one-third of the surplus of his assets after payment of funeral expenses and debts. The bequeath in excess of legal third cannot take affect unless the heirs consent thereto after the death by the testator. Para 52, 53, 63 to 72 of the judgment are quoted as below;

52. Any Mamomedan having a sound mind and not a minor, may make a valid will to dispose of the property.

53. So far as a deed of will is concerned, no formality or a particular from is required in law for the purpose of creating a valid will. An unequivocal expression by the testator serves the purpose.

63. A bequest in favour of an heir is invalid unless the other heirs consent to it after the testator''s death.

In this connection, reference may be made to Section 117 of Mull a''s Principles of Mahommedan Law, which is in the following terms: -

Bequests to heirs. - A bequest to an heir is not valid unless the other heirs consent to the bequest after the death of the testator. Any single heir may consent so as to bind his own share.

Explanation. In determining whether a person is or is not an heir, regard is to be had, not to the time of the execution of the will, but to the time of the testator''s death.

64. At the foot of the said Section, certain illustrations have been given.

A Mahomedan leaves him surviving a son and a daughter. To the son he bequests three-fourths of his property and to the daughter one-fourth. It the daughter does not consent to the disposition, she is entitled to claim a third of the property as her share of the inheritance: see Fatima Bibee v. Ariff Ismailjee (1881) 9 CTR 66.

65. From a perusal of Sections 117 and 118 of the Mulla''s Mahomedan Law operate in different fields, but in a given case, both the provisions may have to be read together.

66. Under the Mahommedan Law, the sons and daughters do not get equal share.

67. In such a situation, it cannot be said, that even if a fraction of property is given in bequest to one of the co-sharers, although, he, in law, would be entitled to inherit much more than bequeathed to in by reason of the will of the testator, still then the same would be valid only because the said co-sharer is also one of the beneficiaries under the said will.

68. If the argument of Mr. N.K. Prasad is accepted, it will be possible to get rid of the limitation of right of a testator as prescribed by the religious scriptures providing for limitation of a Muslim not to dispose of more than l/3rd of the property by will to a stranger or bequeathing the property to some of his heirs along with the strangers.

69. With that end of view, in my opinion, a provision has been made for obtaining consent/co-sharers after the death of the testator, if a "will is made by a testator to a stranger in excess of 1/3 rd of his properties to his heirs or some of them.

70. Amir Ali, in his Principles of Mahomedan Law clearlty laid down that for the purpose of giving effect to a will whereby a testator has bequeathed more than 1/3rd interest either to a testator or to a heir, consent is required in relation thereto of the heirs only after the death of the testator. Thus even a consent by the heirs of the testator during his life time in such a case does not sub-serve the requirement of law.

71. The reaon for making such a rule is obvious; inasmuch as before the death of the testator, it is not known as to who would be the heirs of the testator and to what extent. The testator, thus, could not have obtained consent during his life time from such person who had the testator died at that time would have been his heirs and successors.

72. For these reasons only, in my opinion, a provision has been made to obtain consent of the heirs after the death of the testator; if by reason of a will more than 1/3rd of the properties is sought to be bequeathed to an outsider and to any extent to a heir.

15. In the present case Begum Shanti Tufail Ahman Khan bequeathed her entire properties to Jallaludin, who claims to be the only surviving son in the family. Sri S.K. Misra, learned counsel for Sri Jallaludin-plaintiff states that there are no heirs in the family and thus the bequeath in favour of jallaludin for entire share is valid. He asserts in para 9 that the deceased was issue less and had left behind the only next kith and kin namely Sri Rukom Decn Son of Badruddin. The deceased, however, did not make any such recital in the will in which it is stated that the testator has no children and is alone. She has not given her relationship with the propounder, nor has she stated that her husband did not leave behind him any brother, nephew and grand children. In fact in the affidavit dated 3.11.2003 the applicant Jalluddin has admitted in paras 4, 5 and 8 that at Village Garhi Nawab Tehsil Panipat belong to deceased Mohd. Yusuf Khan and sons of Abdul Latif are selling the properties. He has not denied that these persons are not common ancestor of Nawab Gulam Mohammad Khan. The Court, as such, finds that the deceased testatrix has other heirs, who are alive and that without their consent which has no where been pleaded, the testatrix could not have made a bequest of more than one third of her properties and having done so the will is invalid and inoperative.

16. The question of limitation, was also argued at length. The alleged Will was executed by late Begum Shanti Tufail Khan on 23.5.1974. She died on 9.10.1976. The applicant filed the testamentary case on 18.9.1997 alleging in para 11 that the Will was handed over to Yusuf Ali Khan son of Kamaluddin Khan, who is also an attesting witness to the Will and that Sri Yusuf Ali Khan in pursuance to the instructions of the testatrix handed over the Will to the petitioner on 15.7.1997. In his affidavit (Paper No. A-3/30) filed along with testamentary case Sri Yusuf Ali Khan as an attesting witness has stated in para 5 "that the said will was not traced out within time by the deponent. When the same was traced out the deponent handed over the same to the petitioner. "

17. The explanation of delay offered in para 11 of the petition and para 5 of the affidavit of Sri Yusuf Ali Khan is far from satisfactory. There is no other assertion or statement on record explaining the delay of about 20 years in filing the petition during which time the assets of Begum Shanti Tufail Khan were under a spate of litigation and her alleged properties were changing hands on execution of lease deeds and transfer deeds.

18. The Indian Succession Act 1925 does not provide for any limitation to file a petition for probate. Sri J. Nagar, Administrator General states that in the circumstances Article 137 of the Limitation Act 1963 would be applicable, which is residuary clause and provides that for any other application for which no period of limitation is provided elsewhere, the period of limitation will be three years, when the right to apply accrues. It is submitted by Sri S.K. Misra that in the case of will where no probate was granted, the cause of action to obtain probate accrues on every date until the will is probated. He submits that the residuary clause under Article 137 of the Limitation Act 1963 has no application to proceedings of probate.

19. An application may be given for probate of the Will by executer or any other beneficiaries where the Will provides for its execution. In cases of Will where no executer is named in the Will, nor the Will requires its execution by any other person an application is maintainable for Letters of Administration. In The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, the Supreme Court held that where by statutes matters are covered for determination by a court, with no further provision, the necessary implication is that the court will determine the matter. The application of Article 137 is not confined to the Code of Civil Procedure. The words ''any other application'' under Article 137 cannot be said on the principle of edjusdem generis to be obligations under the CPC other than those mentioned in Part-I of the Third Division. Any other application under Article 137 would be petition or any application under any Act, but it has to be an application to a Court for a reason that Section 4 and 5 of the Limitation Act speak of expiry of prescribed period when the Court is closed. An explanation of prescribed period if an applicant or appellant satisfy the Court that he had sufficient cause for not preferring the appeal or making application during such period. In Smt. Shakuntala Devi v. Ladley

Mohan Mathur 1986 AWC 120 this Court held that no limitation is provided for seeking the probate of a duly executed will. The Court took into account the delay as suspicious circumstances of not producing the Will. The plea of limitation and applicability of Article 137 of the Limitation Act was neither raised nor decided. In Smt. Leela Karwal v. J Karwal and Ors. AIR 1983 All 386, this Court observed in para 58 that there was no limitation prescribed for filing an application for grant of Letters of Administration. The delay in filing the petition is a matter to be considered while adjudicating upon the validity of the will in respect of which the grant of Letters of Administration has been sought. But the mere fact that a petition is filed after 13 years, cannot be a ground for holding it to be non-maintainable in law.

20. In Ramanand Thakur Vs. Parmanand Thakur, it was observed that though Article 137 of the Limitation Act applies to any petition or application filed under any Act. So far as applications for grant of a probate or Letters of Administration are concerned, they are not governed by any Article of Limitation Act. The reasons given in the judgments are that in case an application for grant of probate or Letters of Administration it is difficult to find out as to when the right to apply accrues and unless that date can be fixed, there is no question of starting of the period of limitation. The right to apply for a probate accrues from day-to-day so long as the will remains unprobated. The Patna High Court relied upon the judgment of Calcutta High Court in Kalinath Chatterjee Vs. Nagendra Nath Chatterjee, it was under the old limitation act in which the residuary Article 181 was couched in a different language in Article 181 of the Indian Limitation Act 1901. The applications for which no limitation is provided elsewhere in the schedule or by Section 48 of the CPC the period of limitation was three years, when the right to appeal accrues.

21. In the matter of Estate of Late Gurcharan Pass Puri AIR 1987 P&H 122 the Punjab High Court relied upon the period of limitation prescribed under Article 137 of the Limitation Act 1963 and distinguishing Ramanand Thakur Vs. Parmanand Thakur, held that Article 137 of the Limitation Act 1963, will govern the petition for obtaining Letters of Administration. In John Francis Anthony Gonsalves and Another Vs. Mrs. Agnes Mary Conception Rebello, , the Bombay High Court did not frame any issue with regard to the applicability of the Limitation Act. It, however, held that the delay of 20 years will dis-entitle the legatee from executing the same and that relying upon Section 141 of the Indian Succession Act 1923 which provides that if a Legatee is bequeathed to a person whose name is given as an executer of the will he shall not take the lessee unless he proves the will or signifies, manifests an intention to act an executor and held that the delay of 20 years established that the executor had manifested his intention not to act as an executor.

22. The law of limitation is a law of repose based on rules of estoppel. It serves an important purpose of bringing finality to state of affairs which have prevailed in the knowledge of parties for sufficiently long period of time. The life must go on and that past events should not intervene to bring uncertainty to the common course of

events which engulf the citizen. The law of limitation affirms free and uninterrupted flow of events. Where a legal right has not been enforced, for long period of time, it should not be permitted to be put into motion to disturb the normal events. The residuary Article 137 as interrupted in the Kerela State Electricity Board Trivendrum (supra) applies to all transactions where the limitation is not specifically provided. It fixes a period of three years for taking action when the right to apply accrues. In cases of grant of probate or Letters of Administration of the deceased expressing his/her will, for arrangements of his/her affairs after his/her death the propounder must bring an action for grant of Letters of Administration or probate as early as possible. The applicability of residuary clause under the Limitation Act serves this purpose. The properties cannot be left un-administered for a longer period of time. These may change hands by transfer bringing its administration to uncertainty and disturb the rights which may accrue in favour of such transferee. The present case offers an example of such facts. In the twenty years in which the will was not brought into light the properties in certain states have changed hands many times. The pro-pounder therefore is under obligation to satisfy the court that he has no knowledge about the execution of the will.

23. In the present case the averments regarding the knowledge of the will and the fact that it came to the knowledge of the pro-pounder only on 15.7.1997 have not been established. Mohd. Yusuf Khan, the witness and keeper of the will, has not explained the circumstances in which he did not hand over the will to Sri Jalalludin and did not even choose to inform him about the execution of the will. The inordinate delay has not been adequately explained. The allegations that the will was not traced out in time by the deponent, who happened to be the witness to the will, cannot be believed, when the pro-pounder in the will had succeeded to large number of properties spread over several States in Northern India.

24. In the light of the facts and circumstances brought on record, I find that the application for grant of probate to petitioner with will attached is grossly barred by laches which has not been adequately explained on record. The findings an both the issues with regard to validity of the will and the delay in filing this petition is recorded against the plaintiffs. The testamentary case is as such dismissed with costs to be paid by petitioner to the respondent.